

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 96-128

In The Matter of

IMPLEMENTATION OF THE PAY  
TELEPHONE RECLASSIFICATION AND  
COMPENSATION PROVISIONS OF THE  
TELECOMMUNICATIONS ACT OF 1996

**REPLY COMMENTS OF THE  
TELECOMMUNICATIONS RESELLERS ASSOCIATION**

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Public Notice, DA 98-1198 (released June 19, 1998) (the "Notice"), hereby replies to the comments of the American Public Communications Council ("APCC") and the RBOC/GTE/SNET Payphone Coalition ("Coalition") (collectively, the "PSP Parties") on issues raised by the U.S. Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") in the Court's recent decision remanding the Commission's Second Report and Order, 13 FCC Rcd. 1778 (1997), for further proceedings.<sup>1</sup>

The PSP Parties have responded predictably to the Commission's twin inquiries regarding competition in the payphone market since the deregulation of payphones and the impact

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<sup>1</sup> MCI Telecommunications Corporation v. FCC, Case No. 97-1675, slip op. (D.C. Cir. May 15, 1998).

of deregulation on the local coin rate.”<sup>2</sup> Thus, the PSP Parties contend that “the local coin rate reflects competitive market conditions” and that “costs and rates converge in the coin call market.”<sup>3</sup> TRA strongly disagrees.

The PSP Parties assertion that the payphone market is competitive is predicated upon the asserted ease of entry into the payphone market and the purported ready availability of service alternatives. TRA does not dispute that barriers to entry into the payphone market are relatively low. Equipment costs are manageable and regulatory impediments have generally been eliminated. The relevant consideration, however, is not the number of PSPs that populate the payphone industry, but the lack of multiple PSPs serving individual locations. Neither of the PSP Parties allege that the Commission was mistaken in its belief that premises owners generally “contract exclusively with one PSP to establish that PSP as the monopoly provider of payphone service.”<sup>4</sup> As TRA pointed out in its comments, the competition that is fueled by low entry barriers into the payphone market is thus competition for access to prime locations. As the Payphone Coalition concedes, “there are likely to be dozens of PSPs competing for contracts” with a given premises owner.<sup>5</sup>

As TRA emphasized in its comments, competition among PSPs for prime locations places upward, rather than downward, pressure on payphone charges. In order to fund the higher

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<sup>2</sup> Public Notice, DA 98-1198 at 2.

<sup>3</sup> Id.

<sup>4</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 20541, ¶ 15(1996), *recon.* 11 FCC Rcd. 21233 (1996),, *vacated in part sub nom. Illinois Public Telecommunications Ass'n v. FCC*, 117 F.3d 555, *clarified on rehearing* 123 F.3d 693 (D.C. Cir. 1997).

<sup>5</sup> Comments of Payphone Coalition at 23.

locational charges such competition produces, PSPs must by necessity increase the rates they charge consumers for use of their payphones. As described by U S WEST:

There are many other Pay Phone Service Providers competing vigorously for sites where customers want pay phones. In order for U S WEST to be competitive with these PSPs we must pay market based commissions to our location providers to place our pay phones at their businesses. The only way to do that is to charge a competitive price to users of the phones.<sup>6</sup>

Indeed, the Payphone Coalition acknowledges that “[i]f there are any economic rents to be earned, it is the location provider who will reap them, not the PSPs.”<sup>7</sup> It is obviously irrelevant to consumers whether rate increases driven by ill-advised Commission actions benefit PSPs or premises owners; the adverse impact is the same in both instances.

The PSP Parties seek to minimize the inflationary impact of location-directed competition by arguing that premises owners will ensure that rates do not rise to super-competitive levels. TRA submits that this is an unlikely scenario. Premises owners benefit from higher payphone charges either indirectly through the greater commissions these higher charges fund or directly to the extent they receive a percentage of gross revenues generated by payphones located on their premises. While the “adverse consumer reaction” to inflated payphone charges the Payphone Coalition posits will be forthcoming may blunt to some degree premises owners’ clear economic incentives to drive commissions higher, it is doubtful that much of this criticism will be directed at premises owners. It is more likely that the blame will fall upon the anonymous PSP whose payphone the consumer will

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<sup>6</sup> “U S WEST Raising Price of a Local Phone Call to 35 Cents in Idaho,” U S WEST Communications, Inc. Press Release (March 2, 1998).

<sup>7</sup> Comments of Payphone Coalition at 23.

have little choice but to use in anger, leaving the premises owner without incentive to hold payphone charges in check.

The only other checks on payphone charges in locational monopolies cited by the PSP Parties are (i) wireless services, (ii) phones which can be accessed at a later time, or, as the Commission has recognized, (iii) “payphones at nearby locations.”<sup>8</sup> While all are theoretical sources of pricing discipline, these alternatives, do not, either individually or collectively, provide the necessary restraints on PSP pricing flexibility. Wireless services are only useful to those that subscribe to them and to the extent a mobile phone is available when a consumer needs to place a call. While the penetration of wireless services has increased dramatically over the past decade, the larger part of the population still does not subscribe to either cellular, PCS or ESMR services. Moreover, penetration rates for wireless services decrease rapidly at lower socio-economic levels, leaving those who can least well afford inflated payphone charges to pay those rates. And those consumers that do subscribe to wireless services will often find that wireless rates will exceed even inflated payphone charges, particularly for longer duration calls billed on a usage-sensitive basis and calls placed while roaming.

Of course, consumers can, as APCC opines, “place the call at a different time.”<sup>9</sup> Payphones, however, are generally used only when an immediate need arises. The principal rationale behind the deployment of payphones at public locations is that consumers often require the ability to place calls when away from home or work. Hence, payphones are not generally used for casual

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<sup>8</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 20541 at ¶ 15.

<sup>9</sup> Comments of APCC at 5.

calling other than by those who do not have access to telephone service in their residences. And this latter group is least well positioned to tolerate super-competitive payphone rates.

Reliance upon “payphones at nearby locations” as competitive alternatives, while theoretically defensible, bears no linkage to reality. As the PSP Parties acknowledge, access to alternative PSPs is unavailable in many transient locations such as airports and train stations.<sup>10</sup> In other locations, such as restaurants, hotels and parking garages, alternative PSPs may be accessible, but consumers will, more often than not, not know where these payphones are located or what rates they charge for usage. As TRA noted in its comments, it is simply not realistic to expect that a consumer, having located a payphone in a parking garage or a restaurant or on the street, will elect not to use that phone because there *might* be another payphone elsewhere that *might* be less expensive. While APCC may be correct that “more than 30 percent of the payphones in the vicinity of Austin, Texas were within visual range of another provider’s payphone,”<sup>11</sup> it is the height of irrationality to suggest that consumers will check prices charged by payphones at multiple locations before placing a call.

TRA submits that if the “market forces” identified by the PSP Parties were disciplining payphone pricing, that discipline would be evidenced in a wide range of payphone charges reflective of differing costs and competitive conditions. As one of the Payphone Coalition’s experts concede, however, “[w]ith the exception of New York, in every major state, the prevailing local coin rate is \$.35.”<sup>12</sup> As is apparent, PSPs took advantage of the Commission’s identification of \$0.35 as the

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<sup>10</sup> See, e.g., Comments of APCC at 5.

<sup>11</sup> Id. at 4.

<sup>12</sup> Comments of Payphone Coalition at Attachment 2, p. 2.

“market rate” to inflate payphone charges without regard to underlying costs or the extent of alternative calling sources available to consumers. “Payphones in nearby locations,” where available to consumers, are apparently not driving down rates to any noticeable extent.

Without significant competition, costs and rates will not converge in the coin call market. Accordingly, the Commission cannot legitimately rely upon the local coin rate as a surrogate for a “market-based” coinless toll rate.<sup>13</sup> In the absence of disciplining market forces, the Commission has recognized that “a pricing methodology based on forward-looking, economic cost best replicates, to the extent possible, the conditions of a competitive market,” encouraging “efficient levels of investment and entry.”<sup>14</sup> If the Commission does not wish to compute the forward-looking, economic cost of originating toll free or access code calls from payphones, the only meaningful hope that it has of creating market forces sufficient to discipline PSP pricing of such calls is to ensure that the individual making the decision whether to place the call has a direct financial interest in that decision. It is for this reason that TRA urged the Commission in its comments (i) to carefully consider the proposal of AirTouch Paging (“AirTouch”) to establish a new toll free service which would provide callers toll service free of charge, but treat calls to designated toll free numbers as local coin calls for

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<sup>13</sup> While the Payphone Coalition argues that the best “surrogate for the coinless call market is the market for 0+ calls,” the Commission has already concluded that such an approach “would tend to overcompensate PSPs.” Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd. 20541 at ¶ 69. Moreover, TRA submits that the well-documented abuses in OSP pricing argues strongly against this approach.

<sup>14</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 672, 679 (1996), *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19738 (1996), *further recon.*, FCC 97-295 (Oct. 2, 1997), *aff'd in part, vacated in part sub. nom. Iowa Utilities Board v. FCC*, 120 F.3d 753 (1997), *modified* 120 F.3d 820 (8th Cir. 1997), *cert. granted sub. nom. AT&T Corp. v. Iowa Utilities Board* (Nov. 17, 1997), *pet. for rev. pending sub. nom., Southwestern Bell Telephone Co. v. FCC*, Case No. 97-3389 (Sept. 5, 1997), *pet. for cert. pending*.

purposes of compensating PSP for use of their facilities to originate calls to those numbers,<sup>15</sup> or, (ii) in the alternative, to revisit its decision not to require callers initiating toll free and access code calls from payphones to deposit coins in those payphones.

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to modify its mechanism for compensating PSPs for originating toll free and access code calls in a manner consistent with these reply comments and its earlier-filed comments.

Respectfully submitted,

**TELECOMMUNICATIONS  
RESELLERS ASSOCIATION**

By: Catherine M. Hannan  
Charles C. Hunter  
Catherine M. Hannan  
HUNTER COMMUNICATIONS LAW GROUP  
1620 I Street, N.W.  
Suite 701  
Washington, D.C. 20006  
(202) 293-2500

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Its Attorneys

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<sup>15</sup> AirTouch Paging Petition for Rulemaking to Establish a Dedicated 8XX Code for Toll-Free Calls Placed from Pay Telephones, RM No. 9273, filed April 17, 1998.

## **CERTIFICATE OF SERVICE**

I, Catherine M. Hannan, hereby certify that a true and correct copy of the foregoing document has been served by hand this 27th day of July, 1998, on the following:

Dorothy T. Attwood, Chief  
Enforcement Division  
Federal Communications Commission  
Common Carrier Bureau  
Stop 1600A, Room 6008  
2025 M Street, N.W.  
Washington, D.C. 20554

International Transcription Services, Inc.  
1231 20th Street, N.W.  
Washington, D.C. 20036

  
Catherine M. Hannan